?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 18.09.2018
*CORAM
THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN
+W.P.(MD)No.20019 of 2017
#U.Valarmathi
... Petitioner
Vs.
$1.The State of Tamil Nadu,
Rep.by its Secretary,
Higher Education Department,
Secretariate,
Chennai.

2.The Director of Collegiate Education,
Chennai.

3.The Regional Joint Director of Collegiate Education,
Madurai.

4.The Accountant General (A & E),
361, Anna Salai,
Chennai ~ 18.

5.The Secretary,
Saiva Bhanu Kshatriya College,
Aruppukkottai,
Virudhunagar District.

6.The Principal,
Saiva Bhanu Kshatriya College,
Aruppukkottai,
Virudhunagar District.
... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 3rd respondent in his proceedings in Pa.Mu.No.4570/E2/2014 dated 26.10.2016 and quash the same and direct the respondents to regularize the period from 21.05.1991 to 29.01.2004 as Special Disability Leave and sanction the terminal benefits to the petitioner-s husband and consequently, family pension to the petitioner.

!For Petitioner : Mr.V.Panneer Selvam
^For Respondents : Mrs.S.Srimathy, Spl.G.P.for R1 to R3
Mr.P.Gunasekaran for R4
Mr.A.V.Aru for R5

:Order
The petitioner has come forward with the present Writ petition to quash the the order passed by the 3rd respondent in his proceedings in

Pa.Mu.No.4570/E2/2014 dated 26.10.2016 and to direct the respondents to regularize the period from 21.05.1991 to 29.01.2004 as Special Disability Leave and sanction terminal benefits and family pension to the petitioner-s husband.

2.The petitioner is the wife of one R.Ulaganathan. He was appointed as Office Assistant in the year 1976 in the fifth respondent / College. On account of his illness viz., Schizophrenia, he availed medical leave from 21.05.1991 to 06.06.1991. Thereafter, he was treated for his mental illness and hence, he could not attend duty. Taking the said leave period as unauthorized absent, the petitioner?s husband has been terminated from service on 21.05.1991 after obtaining prior approval from the third respondent on 21.07.1998. The petitioner states that after recovering from the said illness, the petitioner-s husband made a request stating that he may be reinstated in service. As his representation did not yield any fruit, the petitioner-s husband filed a Writ petition in W.P.(MD)No.5390 of 2003 and this Court by order dated 08.08.2003 directed the respondent concerned to dispose of the representation dated 28.01.2003. Thereafter, by passing a resolution dated 14.10.2003 the petitioner?s husband has been reinstated in service on 30.01.2004 as Office Assistant and thereafter, he was promoted as Lab Assistant on 16.12.2013. On attaining the age of superannuation, the petitioner-s husband retired from service on 30.04.2014. The pension proposal sent by the respondent / management was rejected for want of regularization of the dismissal period ie., from 21.05.1991 to 29.01.2004. The proposal sent by the respondent / management was partly rejected ie., the request for reemployment has been considered, but however, treating the period of absence as special disability leave was not considered. Till the issue of regularization of the above said period is decided, the petitioner?s husband would be treated as a fresh entrant and based on the same, the respondents / College issued a proceedings dated 30.01.2004 fixing the scale of pay at Rs.2550 ? 55 ? 2660 ? 60 ? 3200. Even though the petitioner was reinstated, the period of service actually rendered prior to the date of dismissal from service and after reinstatement till the date of reinstatement will not be taken into account for the purpose of pensionary benefits / retirement benefits. But unfortunately, the same has been rejected by the impugned proceedings dated 26.10.2016. As against the same, the present Writ petition has been filed.

3.The learned counsel for the petitioner would submit that her husband could not attend work for 13 years on account of his illness and rejecting the request in treating the special leave for extra ordinary leave or special disability leave on loss of pay is illegal. He would further contend that if the actual period of service rendered prior to the dismissal and after reinstatement is taken into account, it would be suffice to get the pensionary benefits. Further he would submit that the petitioner-s husband submitted a letter stating that he will not claim any monetary benefits or other benefits, without giving up the terminal benefits / pensionary benefits due to her husband.

4.The third respondent has filed a counter affidavit stating that the petitioner-s husband was absent from 21.05.1991 and hence, he was dismissed

from service after getting necessary approval. Further, based on the medical certificate, the petitioner?s husband has been reinstated as a fresh entrant and hence, no other benefits was given. It is further stated that in terms of Rule 21 of the Tamil Nadu Pension Rules, 1978, a person who was dismissed or removed from service then his past service would be forfeited. In terms of Rule 22 of the said rule, if the order is interfered with by way of filing an appeal or review, then the petitioner?s husband contention may be justified. Admittedly, in this case, no appeal or review was filed. Hence, the order passed by the authorities has become final.

5.In the present Writ petition, the request to consider the period of employment from 21.05.1991 to 29.01.2004 to treat it as special disability leave and loss of pay, was rejected. Further, the original order of the collegiate education has not been questioned and that the same has become final. The petitioner?s husband has been given employment as fresh entrant and that his past services has not been regularized and hence, the same cannot be taken into account for the purpose of pensionary benefits.

6.Even though no counter affidavit has been filed by the fourth respondent, it has been brought to the attention of this Court by the learned counsel for the fourth respondent that the leave on loss of pay should not exceed 24 months and in this case, the petitioner?s husband was on not in employment for the period of 13 years. That apart, he was dismissed from service and he has forfeited his past service and hence, the request of the petitioner cannot be granted and the order impugned is perfectly correct and the same need not be interfered with.

7.Heard the learned counsel for the petitioner, learned Special Government Pleader appearing for the respondents 1 to 3 and learned counsel for the fourth respondent.

8.The petitioner?s husband has joined in the services on 07.07.1976 and he did not report for work from 21.05.1991 to 29.01.2004, for which, the petitioner?s husband was dismissed from service. Admittedly, no appeal or review has been filed against the said order. After recovery from the illness, the petitioner?s husband has been reinstated with other benefits as a fresher and that the dismissal period cannot be treated as special disability period.

9.From aforesaid provisions, it is very clear that if an employee has been dismissed or removed from service, the pensionary benefit is forfeited, unless the said dismissal / removal order is interfered with by the Appellate Authority or Reviewing Authority. Though the respondent / college has made proposal as per the request of the petitioner?s husband for treating the absent period as special disability leave, the same was rejected. If that being the case, in terms of Rules 21 and 22, the petitioner?s husband may not be entitled to claim any relief.

10.The impugned order is very clear that 24 months is the maximum period for availing special leave and the same could be granted only based on medical board advise. Here, the petitioner?s husband did not attend duty for

more than 24 months and hence, I find no error in the impugned order passed by the respondent. Accordingly, this Writ petition is dismissed.

11.The contention of the petitioner is that that the actual service rendered prior to the dismissal and after the reinstatement alone shall be taken into account for the purpose of granting the terminal benefits due to the petitioner?s husband. In the absence of such provision in the Tamil Nadu Pension Rule, the said request cannot be acceded to.

12.Before parting with this case, the Government can also take steps to amend the Pension Rules in order to look into the cases like that of the present one on hand where the employees have been disqualified on account of mental illness in order to take into account the actual services rendered prior to dismissal and after reinstatement into services for the purpose of calculation of terminal benefits alone. In such cases, the actual period of service rendered prior to dismissal and after reinstatement into service can be taken into account for the purpose of granting pension based on the last drawn salary. No costs.

To
1.The Secretary,
Higher Education Department, Secretariate, Chennai.

2.The Director of Collegiate Education, Chennai.

3.The Regional Joint Director of Collegiate Education, Madurai.

4.The Accountant General (A & E),
361, Anna Salai, Chennai ~ 18.